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In the Supreme Court of the United States

No. 693

OCTOBER TERM, 1955.

WILLIAM J. KRAUS,
A Taxpayer on Behalf of the City of Cleveland,
Appellant,

vs.

CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

WILLIAM J. KRAUS,
In Propria Persona,
331 Leader Bldg.,
Cleveland 14, Ohio.

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TABLE OF CONTENTS.

Opinions Below 1

Jurisdiction 2

Constitutional and Statutory Provisions Involved 3

Questions Presented by This Appeal 4

Statement of the Case 5

1. The Facts 5

I. The Admissions Contained in the Answer 7

II. Agreed Statement of Facts 8

III. Evidence 11

2. How the Federal Question Is Presented 15

(1) In the Common Pleas Court of Cuyahoga County, Ohio 15

(2) In the Court of Appeals of Cuyahoga County, Ohio 16

(3) In the Supreme Court of Ohio 17

3. The Chief Justice of the Ohio Supreme Court Has Certified That Federal Constitutional Questions Were Presented and Passed Upon by the Court 18

The Questions Presented Are Substantial 19

Conclusion 22

APPENDIX:

A. Opinion of the Supreme Court of Ohio, 163 O. St. 559 23

B. Judgment of the Supreme Court of Ohio 33

C. Order of the Supreme Court of Ohio Denying Rehearing 33

D. Certificate of the Supreme Court of Ohio as to Existence of a Federal Question 34

TABLE OF AUTHORITIES.

Cases.

Chapman v. City of Shreveport, 348 U. S. 892 2
DeAyran v. Butler, cert. den. 347 U. S. 1012 2
Dowell v. City of Tulsa, cert. den. 348 U. S. 912 2
Jacobson v. Massachusetts, 197 U. S. 11 (1905) 19, 21, 2

Periodicals.

23 *George Washington Law Review* 343 20-2
21 *Hastings Law Review* 1 2
23 *Journal of the Bar Association of Kansas* 383 2
15 *Louisiana Law Review* 817 2
4 *Utah Law Review* 416 2
57 *West Virginia Law Review* 205 2

Constitution.

Constitution of the United States:
Amendment I 3, 4,
Amendment XIV, Sec. 1 ..... 3, 4,

Statutes.

Ohio Revised Code:
Sec. 733.56 (G. C. 4311) .....
Sec. 733.59 (G. C. 4314) .....
28 U. S. C. 1257 .....

Congressional Hearings.

Hearings Before the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics, House of Representatives, 82nd Congress, 2d Session, pursuant to House Resolution 74 and House Resolution 447 13

Ordinances Involved.

Resolutions and Ordinances of the City of Cleveland, Ohio:

Codified Ordinances, Sec. 3.3524 7
Resolution 1869-50 8
Resolution 270-51 ..... 3, 7, 8, 9
Ord. No. 996-51 ..... 8, 9
Resolution 1869-51 9
Ord. No. 2061-51 ..... 4, 7, 9
Resolution 326-52 ..... 4, 7, 8, 9
Resolution 327-52 ..... 4, 7, 8, 9
Ord. No. 585-52 ..... 4, 7, 9

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CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the Supreme Court of the State of Ohio entered in the above entitled case on September 28, 1955, on the denial of an application for rehearing and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW.

The opinion of the Supreme Court of the State of Ohio is reported in 163 Ohio St. 559, 127 N. E. 2d 609, and is printed in Appendix A hereto.

The opinion of the Court of Appeals for the Eighth Judicial District of Ohio is reported in 121 N. E. 2d 311, and the opinion of the Court of Common Pleas of Cuyahoga County, Ohio, is reported in 116 N. E. 2d 779.

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JURISDICTION.

Appellant brought the action which is the subject of this appeal in the Common Pleas Court of Cuyahoga County, Ohio, as a taxpayer on behalf of the City of Cleveland, Ohio. The action sought to enjoin the City of Cleveland from adding to its water supply system, inorganic fluoride chemicals, this process being commonly referred to as fluoridation, as provided by ordinance, and to have such ordinance declared invalid as repugnant to provisions of the Constitution of the United States. The invalidity of the ordinance as repugnant to the Constitution of the United States was raised by appellant's petition in the Common Pleas Court and by Assignments of Error in the Court of Appeals and Supreme Court of the State of Ohio. In addition, the Supreme Court of Ohio has certified to this Court that its decision in favor of the validity of the ordinance in question was based upon the provisions of the Constitution of the United States. Appendix D, attached hereto.

The judgment of the Supreme Court of the State of Ohio was entered on June 29, 1955. Journal Entry, Appendix B. Rehearing was denied on September 28, 1955. Journal Entry, Appendix C, attached hereto.

The statutory provision believed to confer upon this Court jurisdiction of the appeal is Section 1257 of Title 28, United States Code, which provides as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The provisions of the Constitution of the United States here involved are as follows:

Constitution of the United States, Amendment XIV, Sec. 1:

> "* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of laws."

Constitution of the United States, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

The ordinance of the City of Cleveland here involved, is as follows:

> Resolution No. 270-51 passed by Council of City of Cleveland, Ohio and effective on March 14, 1951:
>
> "An Emergency Resolution Requesting the Director of Public Utilities to Take the Steps Necessary to Begin the Treatment of City Water with Fluorides.
>
> "Whereas, pursuant to Resolution No. 1869-50, passed October 27, 1950, the Director of Public Utilities and the Director of Public Health and Welfare have investigated and reported favorably upon the feasibility and practicability of treating city water with fluorides; and
>
> "Whereas, this resolution constitutes an emergency in that the same provides for the usual daily operation of a municipal department; now, therefore,
>
> "Be it resolved by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities be requested to take the steps necessary to begin the treatment of city water with fluorides.

Section 2. That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law."

Implementing ordinances of the City of Cleveland are Ordinance No. 2061-51, Resolution 326-52, Resolution 327-52 and Ordinance No. 585-52, all providing for advertising for bids for fluoridating machinery and purchase of fluoride salts.

QUESTIONS PRESENTED BY THIS APPEAL.

The following questions are presented by this appeal:

1. Is fluoridation a violation of the constitutional rights of individuals to treat their health as they themselves deem best, as guaranteed by the Ist and XIVth Amendments?

2. Is fluoridation a violation of the constitutional right of parents to direct and control their children as guaranteed by the Ist and XIVth Amendments?

3. Is fluoridation, being an experiment, a violation of individual liberty as guaranteed by the Ist and XIVth Amendments?

4. Is fluoridation a violation of the constitutional right of individuals to freedom of religion as guaranteed by the Ist and XIVth Amendments?

STATEMENT OF THE CASE.

1. THE FACTS.

On the 12th day of March, 1951, the City of Cleveland, hereinafter referred to as appellee, passed an ordinance providing for the addition of inorganic fluoride chemicals known as fluorides to the water supply of the City of Cleveland through a water supply system owned and operated by it. This water supply system serves some 800,000 city users and 400,000 suburban users.

The addition of these inorganic fluoride chemicals to the water supply, called fluoridation, has as its intended purpose the reduction of tooth decay, known as dental caries, in the teeth of children aged six to twelve. These fluorides in the water supply have no direct effect on the teeth of adults or children below the age of six or above the age of twelve.

William J. Kraus, hereafter referred to as appellant, is a taxpayer of the City of Cleveland. On the 18th day of June, 1952, he made a proper demand upon the Director of Law of the City of Cleveland under the Ohio taxpayer's statute (Secs. 4311 and 4314 Ohio General Code; Revised Code Secs. 733.56 and 733.59) to cause the ordinances and resolutions providing for fluoridation to be declared invalid. This demand was refused. Thereupon appellant instituted a taxpayer's action in the Common Pleas Court of Cuyahoga County, Ohio, to have these ordinances and resolutions which authorized fluoridation to be declared invalid as unconstitutional and beyond the power of the City of Cleveland for the following reasons:

1. The ordinances and resolutions were an unlawful exercise of the police power of the City of Cleveland and thus unconstitutional.

2. The ordinances and resolutions were in conflict with the laws of the State of Ohio and exceeded the powers granted the City of Cleveland by law.

3. The ordinances and resolutions were beyond the power of the City of Cleveland to enact under charter.

4. The ordinances and resolutions were unreasonable, arbitrary, discriminatory and indefinite.

5. The ordinances and resolutions violated the constitutional guarantee of freedom of religion.

6. The ordinances and resolutions violated the constitutional right to liberty by treating therapeutically for a disease without the consent of the individual.

7. The ordinances and resolutions provided for medical experimentation in violation of constitutional rights.

8. The ordinances and resolutions were invalid as providing for the contamination of food in violation of State and Federal Pure Food and Drug Laws.

9. The ordinances and resolutions were invalid as providing for the practice of medicine, dentistry and pharmacy in conflict with, and violation of, State law.

10. The ordinances and resolutions were invalid as being in conflict with a prior ordinance of the City of Cleveland.

Trial was had in the Common Pleas Court on the following: the pleadings and the admissions contained therein, an agreed statement of facts, and the evidence adduced at trial. The essential elements of each of these three are set forth below.

I. The Admissions Contained in the Answer.

Appellees admitted the following facts in their answer:

1. Plaintiff is a taxpayer of the City of Cleveland and brings this action in that capacity.

2. The sections of the Charter of the City of Cleveland are substantially as set forth in plaintiff's petition.

3. The City of Cleveland is a municipal corporation operating a municipal water works through its Department of Public Utilities, Division of Water and Heat. This water works furnishes water to approximately 1,200,000 customers in Cuyahoga County, approximately 800,000 of whom are in the City of Cleveland, and the remainder in suburban areas.

4. Emil J. Crown is the Director of Public Utilities of the City of Cleveland, and as such, is in charge of and exercises control over its water works.

5. Leonard S. Levy is the Treasurer of the City of Cleveland.

6. Plaintiff made written request upon the Director of Law of the City of Cleveland to bring this action, and the Director of Law declined to do so.

7. Section 673 of the Municipal Code of Cleveland is substantially as set forth in the petition, except it has been renumbered as Section 3.3524 of the Codified Ordinance of the City of Cleveland of 1951.

8. Resolution No. 270-51, Ordinance No. 2061-51 and Ordinance No. 585-52 are substantially as set forth in the petition.

9. Resolutions Nos. 326-52 and 327-52, as adopted by the Board of Control of the City of Cleveland, are substantially as set forth in the petition.

10. Defendant Crown will, unless restrained by order of this Court, execute contracts pursuant to the awards approved by the Board of Control in Board of Control Resolutions Nos. 326-52 and 327-52.

II. Agreed Statement of Facts.

The following facts not covered by admissions in the answer were agreed upon by the parties:

1. Resolutions Nos. 1869-50 and 270-51, and Ordinance No. 996-51, are substantially as set forth in plaintiff's petition.

2. Contracts were prepared pursuant to Board of Control Resolutions Nos. 326-52 and 327-52, but due to the pendency of this action, have not been executed by defendant Crown.

3. The Director of Public Utilities will enter into a contract in the amount of $40,792.00 with Sweeny & Wise Company for furnishing and installing fluoridation equipment unless restrained from so doing by the Court in this action.

4. The Director of Public Utilities will enter into a contract in the amount of $75,290.00 with the John J. Murnane Company for furnishing and installing fluoridation equipment unless restrained from so doing by the Court in this action.

5. To sustain the program of fluoridation of water, the annual cost to the City will be approximately $100,000.00 for fluoride salts, $10,000.00 for supervisory personnel, and $5,000.00 for the maintenance of the fluoridation equipment.

6. The Ordinances and Resolutions passed by the Council of the City of Cleveland in connection with flu-

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oridation (being Resolutions Nos. 270-51, 1869-51, 326-52 and 327-52 and Ordinances Nos. 2061-51, 585-52 and 996-51) have, for their sole object, the introduction of inorganic fluoride chemicals into the drinking water of the City of Cleveland, for the primary purpose of prevention of dental caries in children from age 6 to 12, and to give resistance to tooth decay to said children as a preventative therapeutic agent.

7. The inorganic fluoride chemicals to be introduced into the water of the City of Cleveland will not, and are not intended to have, any effect primarily on the teeth of children under the age of six, or above the age of twelve, or upon adults.

8. The said inorganic fluoride chemicals to be introduced into the drinking water of the City of Cleveland will not, and are not intended to have, any effect on the potability, palatability or purity of the drinking water of the City of Cleveland.

9. The inorganic fluoride chemicals to be introduced into the drinking water of the City of Cleveland will not, and are not intended, to treat any disease which is contagious, malignant or infectious.

10. The said inorganic fluoride chemicals to be introduced into the drinking water of the City of Cleveland are colorless, odorless and tasteless.

11. The Ordinances and Resolutions passed by the Council of the City of Cleveland, providing for the introduction of fluorides into the water system of the City of Cleveland, provide for the introduction of fluorides into the entire water supply system, and all the water supplied thereby. Sixty-five to seventy percent of said water is used industrially, and ten percent of the population, namely the

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age group six to twelve years, are intended to receive the primary benefits therefrom.

12. The City of Cleveland, through its Department of Public Utilities, Division of Water and Heat, sells water to suburban communities in Cuyahoga County, whose residents comprising approximately 400,000 consumers, obtain drinking water through contracts entered into between the City of Cleveland and the suburban governments, which contracts call for the furnishing of pure, potable and palatable water delivered to the mains of said suburban governments.

13. Certain of the taxpayers and consumers of water of the City of Cleveland practice religious beliefs which discourage the taking of medication in any form, although no such groups appeared at any public hearing on the subject of fluoridation and did not object orally or otherwise.

14. The City of Cleveland is the only public agency which owns and maintains a water supply system in the City of Cleveland and Cuyahoga County, Ohio.

15. There is a difference of opinion in the United States as to the value of fluoridation in preventing and reducing dental caries in children and its effect on the health and well-being of the adult population; the introduction of inorganic fluoride chemicals to Cleveland city drinking water is a local experiment which it is anticipated will produce the result of lessened dental caries in children without any ill effects to the health of the people generally.

16. Water is necessary to human life.

17. It is recognized that fluorine, fluorides and other fluorine compounds are chemicals.

18. It is recognized that fluorine is a very toxic substance and its introduction into the Cleveland City drinking water must be accomplished by trained experts to prevent harm to the users thereof. Fluorides are colorless, odorless and tasteless. Ordinarily, the user would have no way of detecting toxic quantities in his drinking water.

19. That the Director of Public Utilities of the City of Cleveland and the Director of Public Health and Welfare of the City of Cleveland have investigated only the feasibility of treating the water supply system of the City of Cleveland with fluorides so far as the mechanical aspects of fluoridation are concerned. They made no investigation as to its ability to prevent dental caries in children or its effects on the health of adults.

20. Fluorides may be directly applied to the teeth of children six to twelve years of age for the same purpose as is accomplished by fluoridation of public drinking water, and this method is called the topical application of fluoride and is performed by a dentist.

21. Unless they are restrained by order of Court or unless the aforementioned legislation should be seasonably repealed, defendant City and its officers will do all things necessary to execute the legislative mandate described in the aforementioned resolutions and ordinances of council.

III. Evidence.

In the late 20's and early 30's investigation disclosed that fluorides occurring naturally in the water supplies in many areas were the cause of mottled enamel, called chronic endemic dental fluorosis, in the teeth of the residents of those areas. Further investigation disclosed

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that this disease was evident in water containing fluorides in the excess of one part per million and strenuous efforts were made to reduce the fluoride content of these water supplies.

Late in the 1930's it was noticed that in areas where the natural water supplies contained one part per million or more of fluorides, a reduction in the incidence of dental caries, or tooth decay, in the residents of that area was also present. Experimentation tended to show that there was some relation between the fluoride content of the water and the incidence of dental caries. From these studies, the United States Public Health Service proposed a theory that Sodium Fluoride added artificially to public water supplies would act in the same manner as natural fluorides, and in a concentration of one part per million, would give resistance to dental caries, and, at the same time, not be accompanied by a marked degree of dental fluorosis.

To test the validity of this theory, there have been initiated experiments set up on a ten or fifteen year basis in seven pilot cities of the United States in which Sodium Fluoride is added to the public water supply in a concentration of one part per million. These experiments, commenced in 1945 and now in progress, will not be completed until the years 1955 to 1960. The sole object of these experiments is to test the theory that artificial fluorides will have the same effect on the teeth of children (the only ones who benefit from fluoridation) as the natural fluorides found in water in some areas.

No studies are being made of the non-dental effect of the sodium fluoride on adults, children, or those suffering from cardio-vascular disease, nephritis, diabetes, arthritis, or other diseases. The only investigation that has been carried on has been a comparison of vital statistics be-

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tween those cities which add sodium fluoride to their water supplies and those who do not.

It is generally agreed that the cause of dental caries is unknown and that the exact method by which fluorides in the water supply accomplishes its alleged purpose is likewise unknown. However, much is known about the nature and action of sodium fluoride.

The expert witnesses of appellee all agree that sodium fluoride, which it was testified would be introduced into the Cleveland water supply system to accomplish fluoridation, was a highly toxic substance, whose most general use, prior to the advent of fluoridation of water, was as a rat poison; that it was not proven that this chemical substance was necessary to sustain life; and that it was, in fact, destructive of the metabolic process of a cell and therefore a poison. One witness did testify that this chemical substance was a nutritional element in life, although he was not a medical doctor. Dr. Knapp, the Health Commissioner of the City, who is a medical doctor, did testify that sodium fluoride is a poison and was not necessary to sustain life and is not a nutritional element in life.

The evidence failed to disclose that the State Board of Health has officially approved any program of fluoridation of public drinking water in the City of Cleveland.

In addition the Court considered the printed transcript of the *Hearings Before the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics,* House of Representatives, 82nd Congress, 2d Session, pursuant to House Resolution 74 and House Resolution 447, this House Select Committee being frequently referred to as the "Delaney Committee." The hearings held by the Delaney Committee devoted much time to an exhaustive review of the question of fluoridation and

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examined many expert witnesses all of whom were connected in some manner with the original research on fluorides or fluoridation or scientific fields closely allied thereto.

The final report of the Delaney Committee was introduced into evidence by appellant, this final report concluding from all of the evidence and expert testimony before it that universal fluoridation of public drinking water should not be adopted at this time.

The Trial Court found that the State and Federal constitutional rights of plaintiff and other taxpayers were not violated by said fluoridation legislation; and that the State had the paramount right to treat the bodies of plaintiff and other taxpayers and the bodies of their children as the State saw fit if in its opinion such legislation was for the general welfare. For these reasons and others stated in its opinion, the Trial Court held the fluoridation ordinance and resolutions to be valid and judgment was therefore entered in favor of appellee and against appellant.

From this judgment appellant appealed to the Court of Appeals which affirmed the judgment of the lower Court.

From this adverse judgment of the Court of Appeals, appellant appealed to the Ohio Supreme Court which affirmed the judgment of the Court of Appeals.

From this adverse judgment of the Ohio Supreme Court, appellant now takes his appeal to this Court.

2. HOW THE FEDERAL QUESTION IS PRESENTED.

The Federal constitutional question was preserved throughout the progress of this litigation:

(1) In the Common Pleas Court of Cuyahoga County, Ohio.

The petition alleged as follows:

"Plaintiff says that at all times herein mentioned the following provisions of the Constitution of the United States were in full force and effect:

"Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

"Amendment IV. * * * no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"1. Said ordinances and resolutions providing for the fluoridation of the water and water supply system of the defendant, City of Cleveland, are an unlawful exercise of the police power of defendant, City of Cleveland and are thus unconstitutional under both the Federal and Ohio Constitutions.

"5. Said ordinances and resolutions providing for the fluoridation of water and the water supply system of the defendant, City of Cleveland, violate state and federal constitutional guarantees of freedom of religion, in that certain of the taxpayers of the City of Cleveland practice religious beliefs which discourage the taking of any medication and this ordinance compels them to use water treated with fluoride chemicals for medicinal purposes thereby infringing on their right to freely practice their religion according to the dictates of their own conscience.

"6. Said ordinances and resolutions are void and illegal because they provide for the medical treatment of substantially all the population of the City of Cleveland with an alleged therapeutic chemical agent without their individual consent and thus in violation of their fundamental constitutional rights as free men.

"7. Said ordinances and resolutions providing for the fluoridation of the water and water supply system of the defendant, City of Cleveland, are void and illegal because they result in medical experimentation on the population of the City of Cleveland, accurate medical proof of the value of fluoridation not yet being available, and compels said population to submit to such experimentation without their consent, all in violation of their fundamental constitutional rights."

(2) In the Court of Appeals of Cuyahoga County, Ohio.

The Assignments of Error filed on behalf of plaintiff in the Court of Appeals were as follows:

"1. The court erred in holding that the fluoridation ordinances and resolutions of the City of Cleveland do not violate the rights of the individual to personal liberty to treat his health as he deems best, as guaranteed by the Federal and State Constitutions.

"2. The court erred in holding that the fluoridation ordinances and resolutions do not violate the right of parents to their personal liberty to rear and care for their children as they deem best as guaranteed by the Federal and State Constitutions.

"3. The court erred in holding that the fluoridation ordinances and resolutions do not constitute medical experimentation on the individual and in holding that fluoridation does not constitute an invasion of personal liberty free from such experimentation as guaranteed by the Federal and State Constitutions.

"4. The court erred in holding that the fluoridation ordinances and resolutions do not violate the right of the individual to freedom of religion as guaranteed by the Federal and State Constitutions.

"10. The court erred in ruling that the fluoridation ordinances and resolutions are not in conflict with the Constitution and laws of the State of Ohio, and the Constitution of the United States."

(3) In the Supreme Court of Ohio.

The Assignments of Error filed on behalf of plaintiff were as follows:

"2. The said Court of Appeals erred in holding that the ordinances and resolutions of the City of Cleveland providing for the fluoridation of the city water supply did not violate the personal liberty guaranteed to individuals to treat their health as they deem best, which personal liberty is guaranteed by the Constitution of Ohio and the Constitution of the United States.

"3. The said Court of Appeals erred in holding that the ordinances and resolutions of the City of Cleveland providing for the fluoridation of the city water supply do not violate the parental right to safeguard the health of their children as they deem best, which right is guaranteed by the Constitution of Ohio and the Constitution of the United States.

"4. The said Court of Appeals erred in failing to hold that the fluoridation of the city water supply, which is an experiment, constitutes an invasion of personal liberty contrary to the rights guaranteed by the Constitution of Ohio and the Constitution of the United States.

"5. The said Court of Appeals erred in failing to hold that the fluoridation of the city water supply violated the right to freedom of religion which is guaranteed by the Constitution of Ohio and the Constitution of the United States.

"10. The said Court of Appeals erred in holding the ordinances and resolutions of the City of Cleveland providing for fluoridation were a valid exercise of the police power of the City of Cleveland under the rule of law announced by the Supreme Court of the United States in the case of Jacobson vs. Massachusetts, 197 U. S. 11."

(4) Appellant also filed an Application for Re-Hearing in the Supreme Court of Ohio wherein he stated:

"Now comes William J. Kraus, a taxpayer, plaintiff-appellant in the above entitled cause, and respectfully applies for a re-hearing of the appeal in the within case for the reason that the decision did not:

"2. Recognize the limitation upon the police power announced in the case of Jacobson vs. Massachusetts, 197 U. S. 11."

3. THE CHIEF JUSTICE OF THE OHIO SUPREME COURT HAS CERTIFIED THAT FEDERAL CONSTITUTIONAL QUESTIONS WERE PRESENTED AND PASSED UPON BY THE COURT.

Attached to the jurisdictional statement as Exhibit D and filed separately in this Court with the papers and transcript of the Ohio Supreme Court is a certificate of the Ohio Supreme Court which certifies that Federal constitutional questions were presented in this case and were passed upon by the court.

It is thus obvious that the Chief Justice of the Ohio Supreme Court found that the appeal did raise the Federal constitutional questions and that the Supreme Court of Ohio did make a decision in respect thereof adverse to the appellant.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

There are two simple and fundamental questions which arise in this case and without abandoning all other questions presented, appellant urges their high importance:

1. Is the state or local government to have the right to compel the medical treatment of individuals without reference to their consent?

2. And can the water of a community become the vehicle whereby this newly established function and right of the state or local government to medically treat its citizens is carried out?

In essence these questions strike at the very root of our American way of life.

While government has become more complex with the impact of individual upon individual in our highly industrialized and integrated society—and as a result individual liberties have necessarily been reduced in favor of the general welfare of all the people—nevertheless, the courts have, wherever possible, sought to retain the safeguards surrounding the fundamental rights and liberties of individuals as guaranteed in the state and federal constitutions.

This proposition is illustrated in the pronouncement by this Court in the celebrated case of *Jacobson vs. Massachusetts,* 197 U. S. page 11 decided in 1905 wherein this Court laid down the ground rules governing the extent to which and the limited instances whereby the state could, through the exercise of its police power, curtail the rights of free people in our free society.

We can all agree that the American system of government in principle still respects the rights of individuals, as opposed to the rights of the state, and that the individual American citizen retains his dignity and liberty and the

right to treat his own body and the bodies of his children as he sees fit; that while in other countries the individual has become the pawn of the state, with no rights or respect or consideration, we in America have continued to uphold our highest traditions of liberty and dignity of the individual in our society.

Nevertheless, the ready acceptance of fluoridation by legislative bodies and courts affecting large segments of our population gives one cause for grave concern as to the practical application of our concepts of liberty and respect for individuals in this country today.

Certainly we cannot and must not permit the basic and underlying principles of freedom as enunciated by our founding fathers to be destroyed by permitting the enactment of laws which convert our water supply system into a vehicle for medicine forced upon individuals without regard to their consent.

Probably no question in the field of public health law since vaccination has caused as much comment and fostered as much litigation as has the question of legislation concerning the fluoridation of city water supplies.

Nor has any question resulted in so many published periodicals and so much public discussion. Congressional committees on two occasions (1952 Delaney Committee of Congress; 1954 Committee on Interstate and Foreign Commerce, House of Representatives) held extensive hearings at which diametrically conflicting national authorities have testified both as to the permanent benefits of fluoridation in preventing dental caries and the long range detrimental non-dental effects of fluoridation, particularly on the aged and those suffering from cardio-vascular diseases, nephritis, diabetes and other debilitating diseases.

At least six law review articles have been published which discussed the instant case. 23 *George Washington*

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Law Review 343; 21 *Hastings Law Review* 1; 23 *Journal of the Bar Association of Kansas* 383; 15 *Louisiana Law Review* 817; 4 *Utah Law Review* 416; 57 *West Virginia Law Review* 205.

This fluoridation issue has been to our knowledge, presented to this Court on three occasions. Unfortunately none of these three cases has presented all of the fundamental Federal questions in their full scope.

In *DeAyran v. Butler,* cert. den. 347 U. S. 1012, the sole question presented for consideration was that fluoridation constituted, as to the citizens of the community, a "trespass upon their persons." On this question, the leading case of *Jacobson v. Massachusetts* was not even cited. Not presented were the questions of violation of religious freedom, infringement of parental rights, and, freedom from medical experimentation.

In *Dowell v. City of Tulsa,* cert. den. 348 U. S. 912, while the questions of individual liberty and religious freedom were sketchily presented, the questions of parental rights and medical experimentation were not advanced or urged.

The case of *Chapman v. City of Shreveport* dismissed for want of substantial federal question, 348 U. S. 892, presented in this Court primarily the question of individual rights. Again not discussed were the questions of experimentation, parental rights and freedom of religion, and in fact this case in the Trial Court rested more or less on the question of municipal power.

From the foregoing analysis it is obvious that the three cases previously submitted to this Court did not fully and clearly present the fundamental and all-important constitutional questions raised by fluoridation.

These questions are, we submit, fully present and raised in the instant case.

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We, therefore, urge this Honorable Court that it is time to again re-examine and re-state the basic ground rules governing our society and American way of life as enunciated in 1905 in the *Jacobson* case. Perhaps the passage of time has dimmed our memories and a fresh re-statement of fundamental principles is necessary to clear the stale and confusing air that may have crept in over the past fifty years.

CONCLUSION.

Appellant urges that probable jurisdiction should be noted because of the substantial nature of the questions presented and the great public interest in the validity of fluoridation. We cannot believe that American liberty has come to mean that an individual's body may, without his consent, be invaded with medicines and chemicals, to combat a disorder which is not contagious, malignant or infectious. We submit that this Court must re-examine and re-state emphatically its decision in the *Jacobson* case before so startling and unusual a doctrine as fluoridation is permitted to become lawful in this country.

Respectfully submitted,

WILLIAM J. KRAUS,
In Propria Persona,
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Cleveland 14, Ohio.

APPENDIX A.

Opinion of the Supreme Court of Ohio, 163 O. St. 559.

Municipal corporations—Police power—Public health—Prevention and control of dental caries—Legislation for fluoridation of city water—Constitutional law—General laws relative to adulteration and medical practice not contravened.

1. Prevention and control of dental caries, a common disease of mankind, is a proper subject, in relation to public health, for legislation enacted pursuant to the police power vested in municipalities by the general laws and the Constitution of the state of Ohio.

2. The enactment of legislation by the city council of Cleveland providing for fluoridation of the Cleveland water supply, by the introduction of inorganic fluoride chemicals therein, constitutes neither an infringement of the constitutional liberties of the citizens of such municipality nor an exercise of power in contravention of the general laws in relation to adulteration or the practice of medicine.

(No. 34190—Decided June 29, 1955.)

APPEAL from the Court of Appeals for Cuyahoga County.

The city of Cleveland owns and operates a municipal water department which supplies water to the inhabitants of said city and surrounding territory.

After public hearings thereon, certain ordinances and resolutions were passed and adopted providing for the fluoridation of such water, for the purpose of preventing dental caries.

Whereupon the plaintiff, appellant herein, brought a taxpayer's action, seeking a permanent injunction restraining the city and others, appellees herein, from expending

money for the fluoridation of the water and from entering into any contracts therefor, to declare the resolutions and ordinances unconstitutional and void and to declare void any contract already entered into.

It is unnecessary to make an extensive review of the evidence before the trial court. It consists of testimony and exhibits as to the value and effect of fluoridation as a preventive of dental caries.

MATTHIAS, *J.* Essentially, the plaintiff attacks the legislation on two grounds, first, that it infringes upon certain of his fundamental liberties, and, second, that it conflicts with certain statutes of the state and is beyond any power granted to municipalities by the laws and the Constitution of Ohio.

The police power is vested in municipalities by Section 3, Article 18 of the Ohio Constitution, which is as follows:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

By Sections 3616 and 3646, General Code (Section 715.37, Revised Code), municipal corporations are authorized "to provide for the public health."

The basic question presented by this case is whether a municipality has the authority under its police power, in relation to public health, to add inorganic fluoride chemicals to its water supply, where such addition will not and is not intended to have any effect on the potability, palatability or purity of such drinking water but has for its sole purpose the prevention of dental caries.

The plaintiff contends that the prevention or treatment of diseases of the teeth is a matter of private health and not of public health, and that the addition of fluoride chemicals to the water supply constitutes an invasion of his constitutional liberties to treat his health as he deems best, his right as a parent to safeguard the health of his children as he deems best, his right to be free from medical experimentations and his right of freedom of religion.

The personal liberties granted by the Constitution, although broad and on the whole inviolate, are nevertheless subject to certain qualifications and restraints and are generally held to be subject to a valid exercise of the police power. The Supreme Court of the United States in discussing constitutional liberties has said:

> "Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interest of the community." *Chicago, Burlington & Quincy Rd. Co. v. McGuire*, 219 U. S. 549, 55 L. Ed. 328, 31 S. Ct. 259.

The Supreme Court of the United States in *Jacobson v. Massachusetts*, 197 U. S. 11, 26, 49 L. Ed. 643, 25 S. Ct. 358, in holding a compulsory vaccination statute constitutional, said in regard to constitutional liberties:

> "The defendant insists that his liberty is invaded when the state subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all

times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the Legislature to do which no question ever was, or upon acknowledged general principles ever can be made, so far as natural persons are concerned.' "

The plaintiff, while admitting that personal liberties are not wholly free from restraint, contends that, for a valid exercise of the police power on the basis of public health, the subject matter of the regulation must relate to contagious or infectious diseases, and that there must exist an overriding necessity.

In regard to this, it is sufficient to say there is no foundation in law for such a premise. An examination shows that laws relating to child labor, minimum wages for women and minors and maximum hours for women and minors have all been upheld on the basis of the police power in relation to public health. Regulations relating to control of venereal disease, blood tests for marriage licenses, sterilization, pasteurization of milk, chlorination of water and vaccination have all been held valid as based on police power exercised in regard to public health.

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Clearly neither an overriding public necessity or emergency nor infectious or contagious diseases are the criteria which authorize the exercise of the police power in relation to public health.

That dental caries is a disease is not questioned, and its prevalence is well recognized, as is the fact that the health of the teeth bears a direct relationship to general physical health. In sustaining a similar fluoridation statute, the court in *Dowell v. City of Tulsa* (Okla.), 273 P. (2d) 859, 863, stated:

> "The relation of dental hygiene to the health of the body generally is now so well recognized as to warrant judicial notice."

Thus the fact that dental caries is neither infectious nor contagious does not remove it from the authority of a municipality to attempt its control by fluoridation of the water supply.

In *Kaul v. City of Chehalis* (Wash.), 277 P. (2d) 352, 354, the Supreme Court of Washington, in a decision upholding fluoridation legislation, said:

> "Dental caries is neither infectious nor contagious. This, however, does not detract from the fact that it is a common disease of mankind. As such, its prevention and extermination come within the police power of the state."

In considering the same subject, the Supreme Court of Louisiana, in *Chapman v. City of Shreveport,* 225 La. 859, 74 So. (2d) 142, said:

> "The appellees insist, and the district judge concluded, that fluoridation of the water to prevent tooth decay is not a matter of public health, but a matter of private health and hygiene. The evidence in this record refutes overwhelmingly this conclusion. Dental caries is one of the most serious health problems in

> the city of Shreveport, and in the nation as well. The fact that it is not a communicable disease and one that can cause an epidemic does not detract from its seriousness as affecting the health and well-being of the community. The plan for fluoridation, therefore, bears a reasonable relation to the general welfare and the general health of the community, and is a valid exercise of the power conferred by section 2.01 of the charter if it is not arbitrary or unreasonable."

It is argued that the same result might be accomplished by private dental care, and, since there is an alternative to public regulation, the police power may not be invoked. Although it is admitted that private care would be as effective, the record shows that there are not sufficient private dental facilities to perform the task. Under our modern existence the law must change and expand with mechanical and scientific progress. What did not concern public health yesterday, because of an inability of science to cope with the problem at hand, may very well today become a matter of public health due to scientific achievement and progress. The use of fluoridation to prevent dental caries is an excellent example of this proposition. Science has discovered a method whereby dental caries may be diminished. The prevalence and danger of such caries are well known and the only practicable application of such scientific knowledge is by treating drinking water with fluoride. Thus the problem of dental caries has of necessity become one of public health.

Nor does the fact that the fluoride, instead of killing germs, builds up a resistance to the disease have any effect on the validity of fluoridation legislation. The court in *Dowell v. City of Tulsa, supra,* 863, disposed of this question, in the following language:

> "Plaintiffs concede, as they must, that municipalities may chlorinate their water supply, *Common-*

wealth v. Town of Hudson, 315 Mass. 335, 52 N. E. (2d) 566; McQuillin Municipal Corporations (3d Ed.), Vol. 7, Sec. 24.265 and though they contend, under one proposition, that a city's treatment of its water supply with fluorides is the unlicensed practice of medicine, dentistry and pharmacy under our statutes, they here argue that such treatment must be distinguished from treatment with chlorides, because the latter will kill germs, purify water and accordingly aid in the prevention and spread of disease, whereas fluorides will not. We think that if the putting of chlorides in public water supplies will in fact promote the public health, the distinction sought to be drawn by plaintiffs is immaterial. To us it seems ridiculous and of no consequence in considering the public health phase of the case that the substance to be added to the water may be classed as a mineral rather than a drug, antiseptic or germ killer; just as it is of little, if any, consequence whether fluoridation accomplishes its beneficial result to the public health by killing germs in the water, or by hardening the teeth or building up immunity in them to the bacteria that causes caries or tooth decay. If the latter, there can be no distinction on principle between it and compulsory vaccination or inoculation, which, for many years, has been well established as a valid exercise of police power."

Although it is true that the actual active effect of fluoridation is confined to that period of a person's life while the teeth are developing, such benefits extend on into adult life and fluoridation legislation is not such class legislation as to invalidate it.

In *Chapman v. City of Shreveport, supra,* 145, the court answers that argument, as follows:

"Although the immediate purpose of the proposed fluoridation is to retard and decrease the disease of dental caries in young children, the protection thus

given will continue well into adult life. Not only will the proposed fluoridation retard and reduce this disease in the generation of children presently in Shreveport, but its effect will continue into their adult life, and consequently the proposed measure will ultimately be beneficial to all the residents of the city.

"The health of the children of a community is of vital interest and of great importance to all the inhabitants of the community. Their health and physical well-being is of great concern to all the people, and any legislation to retard or reduce disease in their midst cannot and should not be opposed on the ground that it has no reasonable relation to the general health and welfare. Children of today are adult citizens of tomorrow, upon whose shoulders will fall the responsibilities and duties of maintaining our government and society. Any legislation, therefore, which will better equip them, by retarding or reducing the prevalence of disease, is of great importance and beneficial to all citizens. In our opinion the legislation does bear a reasonable relation to public health."

It is clear from the record that the fluoridation of water for the prevention of dental caries has progressed far beyond the experimental period and has now become an established method. The facts that there are still differences of opinion as to its value and effect by a number of persons and that there are certain questions unanswered in relation to fluoridation do not make it an experiment. There are dissenters to many established and proved scientific practices which are accepted today. Dissent to scientific method does not constitute such method an experiment, and plaintiff's contention that fluoridation constitutes experimentation is without foundation.

Plaintiff's argument that fluoridation constitutes mass medication, the unlawful practice of medicine and adul-

teration may be answered as a whole. Clearly, the addition of fluorides to the water supply does not violate such principles any more than the chlorination of water, which has been held valid many times.

It was said in *Dowell v. City of Tulsa, supra,* 864:

> "Plaintiffs do not elaborate on their contention that ordinance 6565 is in violation of the 'free exercise' of religion, which, in the First Amendment of the United States Constitution, Congress is forbidden to prohibit, but we assume this is based on the hypothesis that the fluoridation prescribed in the ordinance is a form of 'medication' or 'medical treatment' forbidden by the tenets of one or more well known churches or religious sects. This argument is closely allied to one phase of the plaintiffs' 'proposition 4' to the effect that fluoridation is treatment of a disease and therefore that the ordinance constitutes the unlicensed practice of medicine as defined and forbidden in Title 59 O. S. 1951, Sections 495b and 497. To what was said concerning a similar argument in *De Aryan v. Butler, supra,* which we hereby approve and adopt, we wish to add our opinion that in the contemplated water fluoridation, the city of Tulsa is no more practicing medicine or dentistry or manufacturing, preparing, compounding or selling a drug, than a mother would be who furnishes her children a well balanced diet, including foods containing vitamin D and calcium to harden bones and prevent rickets, or lean meat and milk to prevent pellagra. No one would contend that this is practicing medicine or administering drugs."

To summarize:

I. Athough dental caries does not constitute a contagious or infectious disease, it is a disease so common and so widespread that it is a proper subject, in relation to public health, for a municipal corporation to act upon in the exercise of the police power.

II. The introduction of inorganic fluoride chemicals in its municipal drinking water does not constitute an infringement of the constitutional liberties of the citizens of such municipality or an exercise of power in contravention of the general laws in relation to adulteration or practice of medicine.

The judgment of the Court of Appeals is affirmed.

Judgment affirmed.

WEYGANDT, C. J., HART, ZIMMERMAN, STEWART, BELL and TAFT, JJ., concur.

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APPENDIX B.

Judgment of the Supreme Court of Ohio.

June 29, 1955.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellees recover from the appellant their costs herein expended taxed at $_____.

ORDERED, That a special mandate be sent to the Court of Common Pleas of Cuyahoga County, to carry this Judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals, of Cuyahoga County, "for entry."

(Duly certified.)

APPENDIX C.

Order of the Supreme Court of Ohio Denying Rehearing.

September 28, 1955.

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

(Duly certified.)

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APPENDIX D.

Certificate of the Supreme Court of Ohio as to Existence of a Federal Question.

On motion of plaintiff-appellant, William J. Kraus, this Court in addition to the orders made herein, orders it to be certified and made a part of the record in this case and of the judgment and entry of affirmance heretofore rendered and made herein, that in the appeal from the Court of Appeals of Cuyahoga County, Ohio, and in the arguments, both oral and by brief, made in this court on behalf of plaintiff-appellant, it was insisted and relied upon by plaintiff-appellant that the ordinance in question providing for fluoridation of the drinking water of the City of Cleveland was void for the following reasons:

1. Fluoridation is a violation of the constitutional rights of individuals to treat their health as they themselves deem best as guaranteed by Amendment XIV of the Constitution of the United States.

2. Fluoridation is a violation of the constitutional rights of parents to direct and control their children as guaranteed by Amendment XIV of the Constitution of the United States.

3. Fluoridation, being an experiment, is a violation of individual liberty guaranteed by Amendment XIV of the Constitution of the United States.

4. Fluoridation is a violation of the constitutional right of individuals to freedom of religion as guaranteed by Amendments I and XIV of the Constitution of the United States;

and that said Federal constitutional questions were set forth in the opinion of this Court as follows (p. 560): "The plaintiff contends that the prevention of a treatment of diseases of the teeth is a matter of private health and not of public health, and that the addition of fluoride chemi-

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cals to the water supply constitutes an invasion of his constitutional liberties to treat his health as he deems best, his right as a parent to safeguard the health of his children as he deems best, his right to be free from medical experimentations and his right of freedom of religion."

The court further certifies that defendants-appellees in their brief and oral arguments contended the contrary to plaintiff-appellant's claim of invasion of his Federal constitutional guarantees and rights as set forth above.

This court further certifies that it rejected plaintiff-appellant's contentions and held adversely to him and sustained the validity of the ordinance of the City of Cleveland, Ohio in question, in its construction of the Constitution of the United States as appears in the entry and judgment of affirmance heretofore made herein and the written opinion of this court reported in 163 Ohio State 559.

The court further certifies that its decision with respect to the legality and validity of the ordinance of the City of Cleveland authorizing fluoridation of the Cleveland water supply is a final judgment of this court; and that this court is the highest court of law and equity in the State of Ohio in which a decision of this case could be held.

IT IS HEREBY ORDERED that this certificate which is concurred in by all of the judges of the court, be made part of the record in this case.

CARL WEYGANDT, *Chief Justice.*

Dated: Oct. 19, 1955.

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